
**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

ROBERT CHRISTENSEN and MARTHA
RUSSELL, individually and on behalf of all
others similarly situated,

Plaintiffs,

v.

MEDICAL SCANNING CONSULTANTS,
P.A. d/b/a Center for Diagnostic Imaging
d/b/a Rayus Radiology and DIAGNOSTIC
SERVICES HOLDINGS, INC. d/b/a Rayus
Radiology,

Defendants.

Case No.: 0:23-cv-02272-JRT-DTS

CLASS ACTION

Jury Trial Demanded

DEFENDANTS' ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFFS'
COMPLAINT

Defendants, MEDICAL SCANNING CONSULTANTS, P.A. d/b/a Center for Diagnostic Imaging d/b/a Rayus Radiology and DIAGNOSTIC SERVICES HOLDINGS, INC. d/b/a Rayus Radiology (“Rayus” or “Defendants”) by and through the undersigned counsel, hereby assert the following Answer and Affirmative Defenses in response to Plaintiffs’ Complaint (“Complaint”). Defendants incorporate the headings of the Complaint for reference only, and except as expressly admitted below, deny the claims and allegations of the Complaint. For their Answer and

Affirmative Defenses, Defendants state as follows as to each corresponding numbered paragraph of the Complaint:

1. Denied.

2. This paragraph recites legal conclusions to which no response is required. To the extent a response is deemed required, denied.

3. This paragraph recites legal conclusions to which no response is required. To the extent a response is deemed required, denied.

4. Defendants admit providing imaging and radiology services.

5. Denied.

6. Defendants admit providing a website, including for certain uses by patients.

Defendants deny any remaining allegations in this paragraph.

7. Denied.

8. This paragraph recites legal conclusions to which no response is required. To the extent a response is deemed required, denied.

9. Denied.

10. Denied.

11. This paragraph recites legal conclusions to which no response is required. To the extent a response is deemed required, denied.

12. Denied.

13. Denied.

14. Denied.

15. Denied.

16. Denied.

17. Denied.

18. Denied.

19. Denied.

20. Denied.

21. Denied.

22. Denied.

23. Denied.

24. Denied.

25. Denied.

26. This paragraph recites legal conclusions to which no response is required. To the extent a response is deemed required, denied.

THE PARTIES

27. Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph and, therefore, deny the same.

28. Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph and, therefore, deny the same.

29. Admit.

30. Admit.

JURISDICTION AND VENUE

31. The allegations regarding jurisdiction in this paragraph state legal conclusions to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph and, therefore, deny the same.

32. Admit.

33. Defendants admit maintaining their principal place of business in the District. Defendants lack knowledge or information sufficient to admit or deny any remaining allegations in this paragraph and, therefore, deny the same.

COMMON FACTUAL ALLEGATIONS

A. Background

34. Admit.

35. Admit.

36. Admit.

37. Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph and, therefore, deny the same.

38. Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph and, therefore, deny the same.

39. Denied.

40. Denied.

41. Denied.

42. Denied.

43. Denied.

44. Denied.

45. Denied.

i. Facebook's Business Tools and Pixel

46. The allegations in this paragraph state legal conclusions to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph and, therefore, deny the same.

47. The allegations in this paragraph state legal conclusions to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph and, therefore, deny the same.

48. The allegations in this paragraph state legal conclusions to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph and, therefore, deny the same.

49. The allegations in this paragraph state legal conclusions to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph and, therefore, deny the same.

50. Denied.

51. The allegations in this paragraph state legal conclusions to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph and, therefore, deny the same.

52. The allegations in this paragraph state legal conclusions to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph and, therefore, deny the same.

53. The allegations in this paragraph state legal conclusions to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph and, therefore, deny the same.

54. The allegations in this paragraph state legal conclusions to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph and, therefore, deny the same.

55. The allegations in this paragraph state legal conclusions to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph and, therefore, deny the same.

56. The allegations in this paragraph state legal conclusions to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph and, therefore, deny the same.

57. Denied.

58. The allegations in this paragraph state legal conclusions to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph and, therefore, deny the same.

59. The allegations in this paragraph state legal conclusions to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph and, therefore, deny the same.

60. Denied.

61. Denied.

62. Denied.

ii. Defendants' method of transmitting Plaintiffs' and Class Members' Private Information via the Tracking Pixel and/or Conversion API i.e., the Interplay between HTTP Requests and Responses, Source Code, and the Pixel

63. The allegations in this paragraph state legal conclusions to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph and, therefore, deny the same.

64. The allegations in this paragraph state legal conclusions to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph and, therefore, deny the same.

65. The allegations in this paragraph state legal conclusions to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph and, therefore, deny the same.

66. The allegations in this paragraph state legal conclusions to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph and, therefore, deny the same.

67. The allegations in this paragraph state legal conclusions to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph and, therefore, deny the same.

68. Denied.

69. Denied.

70. The allegations in this paragraph state legal conclusions to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph and, therefore, deny the same.

71. Denied.

72. The allegations in this paragraph state legal conclusions to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph and, therefore, deny the same.

73. Denied.

74. Denied.

75. Denied.

76. The allegations in this paragraph state legal conclusions to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph and, therefore, deny the same.

77. Denied.

78. The allegations in this paragraph state legal conclusions to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph and, therefore, deny the same.

79. The allegations in this paragraph state legal conclusions to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph and, therefore, deny the same.

80. The allegations in this paragraph state legal conclusions to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph and, therefore, deny the same.

81. Denied.

82. Denied.

iii. Defendants Violated Their Own Privacy Policies

83. Defendants admit the existence of the privacy policy, which speaks for itself. Defendants deny any remaining allegations within this paragraph.

84. Defendants admit the existence of the privacy policy, which speaks for itself. Defendants deny any remaining allegations within this paragraph.

85. Defendants admit the existence of the privacy policy, which speaks for itself. Defendants deny any remaining allegations within this paragraph.

86. Defendants admit the existence of the privacy policy, which speaks for itself. Defendants deny any remaining allegations within this paragraph.

87. Defendants admit the existence of the terms of use, which speaks for itself. Defendants deny any remaining allegations within this paragraph.

88. Defendants admit the existence of the terms of use, which speaks for itself. Defendants deny any remaining allegations within this paragraph.

89. Denied.

90. Denied.

iv. Warnings about the Pixel's Interception and Transmission of Private Information and Defendants' Implementation of the Pixel

91. The allegations in this paragraph state legal conclusions to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph and, therefore, deny the same.

92. The allegations in this paragraph state legal conclusions to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph and, therefore, deny the same.

93. The allegations in this paragraph state legal conclusions to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph and, therefore, deny the same.

94. The allegations in this paragraph state legal conclusions to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph and, therefore, deny the same.

95. The allegations in this paragraph state legal conclusions to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph and, therefore, deny the same.

96. The allegations in this paragraph state legal conclusions to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph and, therefore, deny the same.

97. The allegations in this paragraph state legal conclusions to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph and, therefore, deny the same.

98. The allegations in this paragraph state legal conclusions to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph and, therefore, deny the same.

99. Denied.

100. Denied.

101. Denied.

102. The allegations in this paragraph state legal conclusions to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph and, therefore, deny the same.

103. Denied.

104. The allegations in this paragraph state legal conclusions to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph and, therefore, deny the same.

105. Denied.

106. Denied.

107. Denied.

108. Denied.

109. Denied.

B. Plaintiffs' Experiences

i. Plaintiff Robert Christensen's Experience

110. Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph and, therefore, deny the same.

111. Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph and, therefore, deny the same.

112. Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph and, therefore, deny the same.

113. Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph and, therefore, deny the same.

114. Denied.

115. Denied.

116. Denied.

117. Denied.

118. Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph and, therefore, deny the same.

ii. Plaintiff Martha Russell's Experience

119. Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph and, therefore, deny the same.

120. Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph and, therefore, deny the same.

121. Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph and, therefore, deny the same.

122. Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph and, therefore, deny the same.

123. Denied.

124. Denied.

125. Denied.

126. Denied.

127. Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph and, therefore, deny the same.

C. Defendants Violated HIPAA Standards

128. This paragraph recites legal conclusions to which no response is required. To the extent a response is deemed required, denied.

129. This paragraph recites legal conclusions to which no response is required. To the extent a response is deemed required, denied.

130. This paragraph recites legal conclusions to which no response is required. To the extent a response is deemed required, denied.

131. This paragraph recites legal conclusions to which no response is required. To the extent a response is deemed required, denied.

132. This paragraph recites legal conclusions to which no response is required. To the extent a response is deemed required, denied.

133. This paragraph recites legal conclusions to which no response is required. To the extent a response is deemed required, denied.

134. This paragraph recites legal conclusions to which no response is required. To the extent a response is deemed required, denied.

135. This paragraph recites legal conclusions to which no response is required. To the extent a response is deemed required, denied.

136. This paragraph recites legal conclusions to which no response is required. To the extent a response is deemed required, denied.

137. This paragraph recites legal conclusions to which no response is required. To the extent a response is deemed required, denied.

138. This paragraph recites legal conclusions to which no response is required. To the extent a response is deemed required, denied.

139. This paragraph recites legal conclusions to which no response is required. To the extent a response is deemed required, denied.

140. This paragraph recites legal conclusions to which no response is required. To the extent a response is deemed required, denied.

141. This paragraph recites legal conclusions to which no response is required. To the extent a response is deemed required, denied.

142. This paragraph recites legal conclusions to which no response is required. To the extent a response is deemed required, denied.

143. Denied.

144. This paragraph recites legal conclusions to which no response is required. To the extent a response is deemed required, denied.

145. This paragraph recites legal conclusions to which no response is required. To the extent a response is deemed required, denied.

146. Denied.

147. Denied.

148. This paragraph recites legal conclusions to which no response is required. To the extent a response is deemed required, denied.

149. This paragraph recites legal conclusions to which no response is required. To the extent a response is deemed required, denied.

150. This paragraph recites legal conclusions to which no response is required. To the extent a response is deemed required, denied.

151. Denied.

D. Defendants Violated Industry Standards

152. This paragraph recites legal conclusions to which no response is required. To the extent a response is deemed required, denied.

153. This paragraph recites legal conclusions to which no response is required. To the extent a response is deemed required, denied.

154. This paragraph recites legal conclusions to which no response is required. To the extent a response is deemed required, denied.

155. This paragraph recites legal conclusions to which no response is required. To the extent a response is deemed required, denied.

156. This paragraph recites legal conclusions to which no response is required. To the extent a response is deemed required, denied.

E. Plaintiffs' and Class Members' Expectation of Privacy

157. Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph and, therefore, deny the same.

158. Denied.

F. IP Addresses are Personally Identifiable Information

159. Denied.

160. The allegations in this paragraph state legal conclusions to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph and, therefore, deny the same.

161. The allegations in this paragraph state legal conclusions to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph and, therefore, deny the same.

162. The allegations in this paragraph state legal conclusions to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph and, therefore, deny the same.

163. The allegations in this paragraph state legal conclusions to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph and, therefore, deny the same.

164. The allegations in this paragraph state legal conclusions to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph and, therefore, deny the same.

165. The allegations in this paragraph state legal conclusions to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph and, therefore, deny the same.

166. Denied.

G. Defendants Were Enriched and Benefitted from the Use of the Pixel and Unauthorized Disclosures

167. Denied.

168. Denied.

169. Denied.

170. Denied.

H. Plaintiffs' and Class Members' Private Information Had Financial Value

171. Denied.

172. The allegations in this paragraph state legal conclusions to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph and, therefore, deny the same.

173. The allegations in this paragraph state legal conclusions to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph and, therefore, deny the same.

174. The allegations in this paragraph state legal conclusions to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph and, therefore, deny the same.

CLASS ACTION ALLEGATIONS

175. Defendants admit that Plaintiffs purport to bring this case as a class action. Defendants deny any remaining allegations in this paragraph.

176. Defendants admit that Plaintiffs purport to bring this case as a class action. Defendants deny any remaining allegations in this paragraph.

177. Defendants admit that Plaintiffs purport to bring this case as a class action. Defendants deny any remaining allegations in this paragraph.

178. Defendants admit that Plaintiffs purport to bring this case as a class action. Defendants deny any remaining allegations in this paragraph.

179. Defendants admit that Plaintiffs purport to bring this case as a class action. Defendants deny any remaining allegations in this paragraph.

180. Denied.

181. Denied.

182. Denied (including as to all sub-parts).

183. Denied.

184. Denied.

185. Denied.

- 186. Denied.
- 187. Denied.
- 188. Denied.
- 189. Denied.
- 190. Denied.
- 191. Denied.
- 192. Denied.
- 193. Denied (including as to all sub-parts).

CAUSE OF ACTION

**COUNT I
NEGLIGENCE**

By All Plaintiffs Against Defendants

194. Defendants incorporate their responses to all aforementioned paragraphs as if fully set forth herein.

- 195. Denied.
- 196. Denied.
- 197. Denied.
- 198. Denied.
- 199. Denied.
- 200. Denied.
- 201. Denied.
- 202. Denied.
- 203. Denied.

204. Denied.

205. Denied.

206. Denied.

207. Denied.

208. Denied.

209. Denied.

210. Denied.

COUNT II
NEGLIGENCE PER SE
By All Plaintiffs Against Defendants

211. Defendants incorporate their responses to all aforementioned paragraphs as if fully set forth herein.

212. Denied.

213. Denied.

214. Denied.

215. Denied.

216. Denied.

217. Denied.

218. Denied.

219. Denied.

220. Denied.

221. Denied.

222. Denied.

COUNT III
Invasion of Privacy – Publication of Private Facts
By All Plaintiffs Against Defendants

223. Defendants incorporate their responses to all aforementioned paragraphs as if fully set forth herein.

224. Denied.

225. Denied.

226. Denied.

227. Denied.

228. Denied.

229. Denied.

230. Denied.

231. Denied.

232. Denied.

233. Denied.

234. Denied.

235. Denied.

236. Defendants deny that any relief or damages sought are allowed, just or proper.

COUNT IV
Invasion of Privacy – Intrusion Upon Seclusion
By All Plaintiffs Against Defendants

237. Defendants incorporate their responses to all aforementioned paragraphs as if fully set forth herein.

238. Denied.

239. Denied.

240. Denied.

241. Denied.

242. Denied.

243. Denied.

244. Defendants deny that any relief or damages sought are allowed, just or proper.

COUNT V
Breach of Implied Contract
By All Plaintiffs Against Defendants

245. Defendants incorporate their responses to all aforementioned paragraphs as if fully set forth herein.

246. Denied.

247. Denied.

248. Denied.

249. Denied.

250. Denied.

251. Denied.

252. Denied.

253. Denied.

254. Denied.

255. Denied.

256. Denied.

257. Denied.

258. Denied.

259. Denied.

260. Denied.

261. Denied.

COUNT VI
Unjust Enrichment
By All Plaintiffs Against Defendants

262. Defendants incorporate their responses to all aforementioned paragraphs as if fully set forth herein.

263. Denied.

264. Denied.

265. Denied.

266. Denied.

267. Denied.

268. Denied.

269. Denied.

COUNT VII
Breach of Fiduciary Duty
By All Plaintiffs Against Defendants

270. Defendants incorporate their responses to all aforementioned paragraphs as if fully set forth herein.

271. Denied.

272. Denied.

273. Denied.

274. Denied.

275. Denied.

276. Denied.

COUNT VIII

Violation of the Texas Medical Practices Act

Tex. Occ. Code §§ 159.001, *et seq.*

By Plaintiff Robert Christensen on Behalf of the Texas Subclass Against Defendants

277. Defendants incorporate their responses to all aforementioned paragraphs as if fully set forth herein. Defendants further deny that this claim or count can be maintained against Defendants.

278. The allegations in this paragraph state legal conclusions to which no response is required. To the extent a response is required, denied.

279. The allegations in this paragraph state legal conclusions to which no response is required. To the extent a response is required, denied.

280. Denied.

281. Denied.

COUNT IX

Violation of Tennessee Consumer Protection Act of 1977 (“TCPA”)

Tenn. Code Ann. §§ 47-18-109, *et seq*

By Plaintiff Martha Russell on Behalf of the Tennessee Subclass Defendants

282. Defendants incorporate their responses to all aforementioned paragraphs as if fully set forth herein. Defendants further deny that this claim or count can be maintained against Defendants.

283. Denied.

284. Denied.

285. Denied.

286. Denied.

287. Denied (including sub-parts).

288. Denied.

289. Denied.

290. Denied.

291. Denied.

292. Denied.

293. Denied.

294. Denied.

295. Denied.

296. Denied.

297. Denied.

298. Denied.

299. Denied.

300. Denied.

301. Denied.

302. Denied.

303. Denied.

304. Defendants deny that any relief or damages sought are allowed, just or proper.

COUNT X

Violation of Tennessee Wiretapping and Electronic Surveillance Act

Tenn. Code Ann. §§ 39-13-601, *et seq*

By Plaintiff Martha Russell on Behalf of the Tennessee Subclass Defendants

305. Defendants incorporate their responses to all aforementioned paragraphs as if fully set forth herein. Defendants further deny that this claim or count can be maintained against Defendants.

306. The allegations in this paragraph (and all sub-parts) state legal conclusions to which no response is required. To the extent a response is required, denied.

307. Denied.

308. Denied.

309. Denied.

310. Denied.

311. Denied.

312. Denied.

313. Denied.

314. Denied.

315. Denied.

316. Denied.

317. Denied.

318. Denied.

319. The allegations in this paragraph state legal conclusions to which no response is required. To the extent a response is required, denied.

320. Denied.

321. The allegations in this paragraph (and all sub-parts) state legal conclusions to which no response is required. To the extent a response is required, denied. Defendants further deny that any relief or damages sought are allowed, just or proper.

322. Denied (including all sub-parts).

323. Denied (including all sub-parts).

324. Denied.

325. Denied.

326. Denied (including all sub-parts).

327. Defendants deny that any relief or damages sought are allowed, just or proper.

COUNT XI

Violation of Minnesota Uniform Deceptive Trade Practices Act (“MDTPA”)

Minn. Stat. §§ 325D.43, *et seq*

By All Plaintiffs Against Defendants

328. Defendants incorporate their responses to all aforementioned paragraphs as if fully set forth herein. Defendants further deny that this claim or count can be maintained against Defendants.

329. Denied.

330. Denied (including all sub-parts).

331. Denied.

332. Denied.

333. Denied.

334. Denied.

335. Denied.

336. Denied.

337. Denied.

338. Denied.

339. Denied.

340. Denied.

341. Denied.

342. Denied.

343. Denied.

344. Defendants deny that any relief or damages sought are allowed, just or proper.

COUNT XII
Violation of the Minnesota Consumer Fraud Act (“MCFA”)
Minn. Stat. §§ 325F.69, et seq
By All Plaintiffs Against Defendants

345. Defendants incorporate their responses to all aforementioned paragraphs as if fully set forth herein. Defendants further deny that this claim or count can be maintained against Defendants.

346. The allegations in this paragraph state legal conclusions to which no response is required. To the extent a response is required, denied.

347. Denied.

348. Denied.

349. Denied.

350. Denied.

351. Denied.

352. Denied. Defendants further deny that any relief or damages sought are allowed, just or proper.

COUNT XIII
Violation of the Minnesota Health Records Act (“MHRA”)
Minn. Stat. §§ 144.291 and 144.293
By All Plaintiffs Against Defendants

353. Defendants incorporate their responses to all aforementioned paragraphs as if fully set forth herein. Defendants further deny that this claim or count can be maintained against Defendants.

354. The allegations in this paragraph state legal conclusions to which no response is required. To the extent a response is required, denied.

355. Denied.

356. Denied.

357. The allegations in this paragraph state legal conclusions to which no response is required. To the extent a response is required, denied.

358. Denied.

359. Denied.

360. Denied. Defendants further deny that any relief or damages sought are allowed, just or proper.

GENERAL DENIAL

Defendants deny all allegations not specifically admitted herein. Defendants further deny that any of the relief or damages sought by Plaintiffs in their Prayer For Relief are allowed, just or proper.

AFFIRMATIVE AND OTHER DEFENSES

Without assuming any burden of proof that by law is not otherwise imposed, Defendants assert the following defenses and affirmative defenses:

FIRST AFFIRMATIVE DEFENSE

(FAILURE TO STATE A CLAIM)

Plaintiffs and/or putative class members have failed to state a claim or cause of action for which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

(STANDING)

Plaintiffs' claims and/or those of the putative class are barred, in whole or in part, because Plaintiffs and the putative class have no standing to bring these claim (for legal or equitable relief) under Article III of the United States Constitution. Plaintiffs and/or putative class members have not suffered injuries in fact that are fairly traceable to the conduct alleged in the Complaint. In addition, Plaintiffs are not "aggrieved person[s]" as defined in 18 U.S.C. § 2710(b)(1).

THIRD AFFIRMATIVE DEFENSE

(FAILURE TO SATISFY FED. R. CIV. P. 23/UNDERLYING LAW)

All or portions of this lawsuit and the claims and counts asserted cannot proceed as a class action under Fed. R. Civ. P. 23 because the proposed claims and classes do not satisfy the applicable legal requirements under Fed. R. Civ. P. 23 and/or cannot be brought or maintained under the state law upon which the claim(s) purport to be based or asserted.

FOURTH AFFIRMATIVE DEFENSE

(NO EQUITABLE RELIEF)

The equitable claims of Plaintiffs and/or putative class members are barred, in whole or in part, because they have adequate remedies, if any, at law.

FIFTH AFFIRMATIVE DEFENSE

(STATUTE OF LIMITATIONS)

Plaintiffs and/or putative class members' claim are barred, in whole or in part, by the statute of limitations.

SIXTH AFFIRMATIVE DEFENSE

(RES JUDICATA)

Plaintiffs and/or putative class members' claims for relief are barred, in whole or in part, by the doctrine of res judicata.

SEVENTH AFFIRMATIVE DEFENSE

(WAIVER)

Plaintiffs and/or putative class members were knowledgeable of the facts and allegations set out in the Complaint. The Complaint and the causes of action alleged therein are therefore barred by the doctrine of waiver.

EIGHTH AFFIRMATIVE DEFENSE

(ESTOPPEL)

Plaintiffs and/or putative class members' claim are barred by the equitable doctrine of estoppel.

NINTH AFFIRMATIVE DEFENSE

(LACK OF ACTUAL AND PROXIMATE INJURY)

Plaintiffs and/or the putative class members' claims are barred in whole or in part because they did not suffer any cognizable damages or other harm, particularly not as a proximate result of any alleged act or omission by Defendants.

TENTH AFFIRMATIVE DEFENSE

(ACTS OF PLAINTIFFS AND THIRD PARTIES)

Any injuries allegedly suffered Plaintiffs or any proposed class member were proximate cause by the acts of Plaintiffs themselves and/or third parties, not by any alleged action or inaction by Defendants.

ELEVENTH AFFIRMATIVE DEFENSE

(FAILURE TO MITIGATE DAMAGES)

To the extent Plaintiffs or and/or the putative class members have failed to mitigate their alleged damages, their claims are barred.

TWELTH AFFIRMATIVE DEFENSE

(FAILURE TO JOIN NECESSARY PARTY)

Plaintiffs have failed to join all parties required for the Court to award complete relief, if any.

THIRTEENTH AFFIRMATIVE DEFENSE

(CONSENT/RATIFICATION)

The alleged conduct complained of in the Complaint was approved, consented to, authorized and/or ratified by Plaintiffs and/or putative class members by their actions, omissions, and course of conduct, in that they were knowledgeable regarding use of Defendants' website and other services referenced in the Complaint.

FOURTEENTH AFFIRMATIVE DEFENSE

(UNCONSTITUTIONAL DAMAGES)

Plaintiffs and/or the putative class members' claims for statutory penalties violate the Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments to the U.S. Constitution and corresponding Articles of the Minnesota Constitution because: (a) the statutory and/or civil penalties claimed are vastly disproportionate to the statutory and/or actual damages claimed or available; (b) the award of statutory and/or civil penalties would constitute an arbitrary and capricious taking of Defendants' property which is unjustified by any rational governmental

interest;; and/or (c) the statutes are unconstitutionally vague, unenforceable or unjustifiably arbitrary.

FIFTEENTH AFFIRMATIVE DEFENSE

(LACHES)

Plaintiffs and/or putative class members' claim are barred by the equitable doctrine of laches.

SIXTEENTH AFFIRMATIVE DEFENSE

(COLLATEAL ESTOPPEL)

Plaintiffs and/or putative class members' claims for relief are barred, in whole or in part, by the doctrine of collateral estoppel.

RESERVATION OF RIGHTS

Defendants reserve the right to amend their answer and affirmative defenses, which may become known during the course of this action, including the defense of after-acquired evidence.

PRAYER FOR RELIEF

WHEREFORE, having answered, Defendants pray for judgment as follows:

1. That Plaintiffs take nothing by their Complaint;
2. That the Complaint be dismissed;
3. That judgment be entered in favor of Defendants;
4. For attorneys' fees and costs incurred; and
5. For such other and further relief as this Court deems just and appropriate under the circumstances.

JURY TRIAL DEMANDED

Defendants hereby demand a trial by jury on all issues so triable.

Respectfully submitted,

CONSTANGY, BROOKS, SMITH & PROPHETE, LLP

Dated: September 22, 2023

By: /s/ Jason D. Friedman
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CERTIFICATE OF SERVICE

I, Jason Friedman, hereby certify that on 22nd day of September, 2023, I caused a copy of *Defendants' Answer to Plaintiff's Complaint* to be electronically filed with the Clerk of the Court using the CM/ECF system, which shall send notification of such filing to the following counsel of record:

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/s/ Jason D. Friedman

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